Determination Of Legal Remedies For Civil Cases To Make The Principles Of Justice Simple, Fast And Lighting Cost

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Abstract

One of the principles in the justice system is justice that is simple, fast and low cost. In this regard, the People's Consultative Assembly (MPR) takes this matter seriously and responds to it by issuing a decree, namely TAP MPR No. VIII/MPR/2000 concerning the Annual Report of High State Institutions at the 2000 Annual Session of the People's Consultative Assembly of the Republic of Indonesia, which one of its substances recommends that the Supreme Court immediately resolve delinquent cases by increasing the number and quality of decisions and that the Supreme Court makes regulations to limit entry cassation case. With this principle, it is necessary to conduct a study regarding the application of these principles.

Keywords*: case limitation; civil case;*

Abstrak

Salah satu prinsip dalam sistem peradilan adalah peradilan yang sederhana, cepat dan biaya ringan. Adanya pengaturan asas peradilan yang sederhana, cepat dan biaya ringan tersebut sebenarnya selain dalam rangka menghilangkan rasa kekhawatiran tentang penegakan hukum (law enforcement) dari para investor asing yang menanamkan modalnya di Indonesia, kekhawatiran dari negara-negara lain yang merupakan mitra bisnis Indonesia dalam pelaksanaan perdagangan bebas, serta sekaligus hal yang terpenting adalah untuk mengurangi penumpukkan perkara di Mahkamah Agung terutama pada tingkat Kasasi. Berkenaan dengan hal tersebut, Majelis Permusyawaratan Rakyat (MPR) menganggap serius hal ini dan meresponnya dengan mengeluarkan ketetapan, yakni TAP MPR No. VIII/MPR/2000 tentang Laporan Tahunan Lembaga lembaga Tinggi Negara pada Sidang Tahunan Majelis Permusyawaratan Rakyat Republik Indonesia tahun 2000 yang salah satu substansinya merekomendasikan agar Mahkamah Agung segera menyelesaikan tunggakan perkara dengan meningkatkan jumlah dan kualitas putusan dan agar Mahkamah Agung membuat peraturan untuk membatasi masuknya perkara kasasi. Dengan adanya prinsip tersebut, maka perlu dilakukan suatu kajian mengenai penerapan dari prinsip tersebut.

Kata Kunci: pembatasan perkara; perkara perdata;

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INTRODUCTION

In order to fulfill daily life, humans as social beings always need each other between one human and another. For this reason, it is necessary to have a reciprocal relationship with each other, which often results in a conflict/dispute, and this is a fact of social life in society, because they have different interests. In public life it is expected to live in peace, in the sense of not being hostile to one another, but if a problem occurs, it is hoped that enmity will be stopped in the sense that there is peace, namely cessation of hostilities, consensus, cessation of hostilities. With the emergence of these conflicts and problems, the law must play an important role in resolving these problems and conflicts.

Settlement of civil cases can be done either through the court (litigation) or outside the court (non-litigation). Related to the process of settlement of cases through the courts, this actually contradicts the implementation of simple, fast and low cost judicial principles as stipulated in Article 2 paragraph (4) of Law no. 48 of 2009 concerning Judicial Power, which states that justice is carried out simply, quickly, and in low cost.

Regulations on Limiting Legal Remedies in Legislation. In this regard, the People's Consultative Assembly (MPR) takes this matter seriously and responds to it by issuing a decree, namely TAP MPR No. VIII/MPR/2000 concerning the Annual Report of High State Institutions at the 2000 Annual Session of the People's Consultative Assembly of the Republic of Indonesia, which one of the substances recommended that the Supreme Court immediately resolve arrears in cases by increasing the number and quality of decisions and that the Supreme Court make regulations to limit entry cassation case.

In this regard, the Supreme Court has issued several provisions in order to reduce or limit legal remedies in order to realize simple, fast and low cost judicial principles, including:

a. SEMA No. 6 of 1992, which stipulates that the handling and settlement of cases at the court of first instance and the court of appeal be completed within a maximum period of 6 six months, and if that time exceeds that time must be reported to the Supreme Court along with the reasons
b. SEMA No. 1 of 2002 concerning Empowerment of the First Level Courts to Implement Peaceful Institutions
c. PERMA No. 2 of 2003 concerning Mediation Procedures in Courts, as later refined by PERMA No. 1 of 2008

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d. PERMA No. 1 of 2001 concerning Applications for Cassation in Civil Cases that do not Fulfill the Formal Requirements.[1]

PERMA No. 1 of 2001 regulates that a civil case to be filed for cassation does not meet the formal requirements as stipulated in Article 46 and Article 47 of Law no. 14 of 1985 concerning the Supreme Court, the clerk of the first level court who decides the case, who is petitioned for cassation does not need to forward to the Supreme Court a cassation request that does not meet the formal requirements. However, the Supreme Court's efforts have not been able to significantly reduce the number of cases. This was in line with the increasing number of cases in the court of first instance and appeals which resulted in an appeal to the Supreme Court. In addition, in the context of limiting cassation lawsuits, the government has made efforts by stipulating the provisions of Article 45A paragraph (2) letter c of Law no. 5 of 2004 concerning Amendments to Law no. 14 of 1985 concerning the Supreme Court.

Thus, based on the provisions of Article 45A of Law no. 5 of 2004, as amended by Law no. 3 of 2009, which regulates that cases that do not meet formal requirements, namely, overdue, late in sending cassation memoranda or not sending cassation notes, are not submitted by the clerk of the court of first instance to the Supreme Court. With regard to the implementation of simple, short and low cost judicial principles in examining a case, a judge at the Sidoarjo District Court is of the opinion that this simple, fast and low cost trial principle is intended to provide protection and legal certainty for parties undergoing the judicial process and at Basically, this principle must be carried out in every judicial process, but in reality not all law enforcement processes are able to realize the principle in question, because in reality the process in the judiciary is often carried out for more than 6 months and is required to pay court fees which in fact are not small.

IMPLEMENTATION METHO

a. Limitation of Legal Remedies through Institutionalizing Mediation in Courts.

Initially, mediation in court tended to be voluntary, but now it has led to an imperative/coercive nature. Initially, mediation in this court was the result of the development and empowerment of a peace institution as regulated in the provisions of Article 130 HIR/154 RBg, which requires a judge hearing a case to seriously seek peace between the parties in a case. However, it turns out that the Supreme Court indicated that

[1] Perma No. 2 of 2003 concerning *Mediation in Courts*.

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the judge did not apply this provision, and was merely a formality to recommend peace before the disputing parties. In practice before the judiciary, it is rare to find peace decisions, the decisions produced by the judiciary in the settlement of cases submitted to them are mostly in the form of conventional decisions that are win or lose, and in fact, solutions are rarely found based on the concept of win win.

Based on this fact, the determination, ability and dedication of the judge to reconcile can be said to be very sterile. As a result, the existence of Article 130 HIR/Article 154 RBg in procedural law is nothing more than a mere decoration or a dead formula. In civil procedural law, there are no facilitating regulations regarding how to carry out mediation which is integrated into the litigation process. HIR and RBg do require the Court to reconcile the parties before the case is decided, but HIR and RBg do not specify in detail the peace procedure facilitated by a neutral third party. Apart from reasons to reduce the accumulation of cases at the cassation level, faster and cheaper case resolution and wider access to justice, PERMA was issued. Currently, the integrated mediation arrangement with the Court is still regulated in PERMA. In the future, integrated mediation arrangements with court processes should be formulated in the Civil Procedure Code in lieu of HIR and RBg. However, the use of out-of-court mediation for environmental, commercial, consumer protection and labor disputes is regulated at the statutory level.

b. Limitation of Legal Remedies through Restrictions on the Effectiveness of Article 30 of Law no. 14 of 1985

Concerning the Supreme Court All decisions given at the final stage by courts other than the Supreme Court, as well as court decisions that are appealed for can be appealed to the Supreme Court by the parties concerned (article 10 paragraph (3) Law No. 20 1947, article 43 of Law No. 14 of 1985). So if the parties concerned have not or have not exercised their rights against a court decision that was passed outside the presence of the defendant (verzet) or the right to appeal to the High Court, then the cassation examination cannot be accepted, unless the law stipulates otherwise (article 43 of Law No. 14 1985). The main provisions regarding cassation are regulated in Law Number 14 of 1985 concerning the Supreme Court, as amended in Law Number 5 of 2004 concerning Amendments to Law Number 14 of 1985 concerning the Supreme Court. Cassation can be filed by interested parties, and these interested parties can represent someone who is specifically authorized (article 44 of Law No. 14 of 1985).

An application for cassation must be submitted to the clerk of the District Court which examines the subject matter of the case. The petition for cassation can be submitted

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either verbally or in writing within a grace period of 14 working days after the intended court decision or order is notified to the applicant (article 46 of Law No. 14 of 1985). Within a grace period of 14 days after the petition referred to in the list of cassation applicants is required to submit a cassation memorandum (Article 47 of Law No.14 / 1985). Application for cassation that exceeds the predetermined time limit or receipt of cassation memory which exceeds the predetermined time limit must be declared unacceptable. Likewise, in the event that the request for cassation is not submitted at all, it will certainly result in not receiving the appeal. The cassation memory must contain objections or reasons for cassation relating to the subject matter of the case, as stipulated in Article 30 of Law Number 14 of 1985, namely because: 1) are not authorized or exceed the limits of authority; 2) misapplied or violated applicable laws; or 3) failing to comply with the requirements required by laws and regulations which threaten said negligence with the cancellation of the decision concerned. Based on these reasons it can be seen that at the cassation level, it is not examined about the seat of the case or the facts but about the law, so that whether the incident is proven or not will not be examined. The assessment of the evidentiary results cannot be considered in the examination at the cassation level. The Supreme Court is bound by the events that have been decided in the last stage. So in the cassation level, the events are not reviewed. Thus the cassation is not intended as a third level court (judex facti), but as a court at the level of cassation.

c. Civil Cases with Certain Nominal Value

In judicial practice, it is often found that civil cassation remedies are used by parties only to delay the execution. This has the effect of the large cost of litigation that must be borne by justice seekers, both the cost of money for filing cases and lawyers, as well as the longer court time, which is not balanced with the compensation expected from the settlement of cases through the court. This is a factor that makes some parties with disputes of small value become reluctant to settle their disputes in court.

In addition to ensuring a fast and efficient judicial process for civil cases with small nominal values, it is also necessary to change the procedural law in the civil sector, namely by establishing a Quick Procedure which is tried by a kind of Small Claim Court or Summary Court, for example, for certain cases. which is of small value, it is sufficient to be tried by a single judge in the court of first instance and if not satisfied, it may be possible to appeal to a panel of three judges in the same court which is the last court, or for certain cases that have been decided by the panel of judges such decision can also be submitted to

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the High Court whose decision is final and cannot be filed for cassation with the Supreme Court.[2]

DISCUSSION RESULT

Simple, Fast, and Low Cost Judicial Principles, namely Justice is carried out simply, quickly, and at low cost, is one of the principles in the administration of justice as set forth in Article 2 paragraph (4) and Article 4 paragraph (2) of the Law on Judicial Powers. Further information regarding the principles of simple, fast, and low cost based on the explanation of Article 2 paragraph (4), simple is intended as an examination and settlement of cases carried out in an efficient and effective, time-efficient and cost-effective manner; Low fees are intended as court fees that can be reached by the community, without sacrificing thoroughness in seeking truth and justice. Asep Iwan Iriawan stated that the word rapid refers to the proceedings of the judiciary, too many formalities are an obstacle to judicial implementation. Regarding "fast" is meant to be as short as possible but with due regard to precision and accuracy. Thus, understanding quickly becomes part of the simple understanding. Speed in resolving disputes will increase authority and increase public trust in the courts.[3] Low costs are determined to be borne by the people, the high costs mostly cause interested parties to be reluctant to file rights claims to the court. It is also necessary to pay attention to the provisions in Article
4 paragraph (2) of the Law on Judicial Power which states: "Courts assist justice seekers and strive to overcome all obstacles and obstacles in order to achieve a simple, fast, and low cost trial"[4]. The principle of simple, fast and low cost is related to the dispute resolution process in court. The principle of simple, fast and low cost requires the form of a trial that is not convoluted, does not waste time, and does not burden the juveniles financially, but it does not mean that judges are allowed to abolish certain procedures that have been established by law, for example ignoring the methods -the way of summoning witnesses and litigant parties as regulated by law Ahmad Mujahidin states that what is meant by the principles of simple, fast, and low cost are:

[2] Soekanto, Soejono. 1983. *Factors Affecting Law Enforcement*. Jakarta: CV Rajawali

[3] Asep lwan Iriawan, *Study of the Authority of Commercial Courts in Business Dispute Resolution Related to the Principle of Legal Certainty as an Effort to Develop the Indonesian Judicial System*, Dissertation, Doctor of Law Study Program, Padjadjaran University Bandung Postgraduate Program, 2010, p. 118.

[4] Sudikno Mertokusumo, *Indonesian Civil Procedure Law*, Op.cit., P. 36.

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a. Simple, namely the proceedings are clear, easy to understand and not convoluted and are not trapped in formalities that are not important in the trial, because if trapped in convoluted formalities it allows various interpretations to arise.
b. Fast, that is, in carrying out the examination, the judge must be smart in taking inventory of the problems posed and identifying the problem and then taking the essence of the problem and then digging deeper through the existing evidence. If everything has been known by the panel of judges, there is no other way except the panel of judges must immediately make a decision to be read out in a trial open to the public.
c. Low costs, which must be calculated logically, in detail and transparently, and eliminating other costs outside the interests of the parties in the case, because the high cost of cases causes justice seekers to take a priori attitude towards the existence of the court Specifically, the issue of cost must refer to a separate legal umbrella in the form of government regulations because it concerns non-tax state revenue, through state institutions in the form of courts. The light cost of settling disputes does not bring a consequence that the settlement of disputes in court is free of charge.[5]

Because in the handling of a case in court, in principle, the cost of the case is known, the details of which have been estimated by the court. In this case, the amount of money paid as an down-payment of the case to the officer at the secretariat will be calculated later. For those who are unable to pay the court fee, they can apply for free (prodeo) by obtaining a permit to be exempted from paying court fees, by submitting a letter of incapacity made by the village head/lurah where he lives which is legalized by the local camat Even though they have submitted a letter of not being able to pay the court fee, the panel of judges still examine the inability of the party who filed the lawsuit. Likewise, in the proceedings at court, the parties do not get a measurable period of time for their dispute resolution to obtain a court decision. The longer a decision is made on their dispute, the longer the parties remain in uncertainty. Not to mention tiered legal remedies that can be utilized, through appeals, cassations, and reconsiderations. It is not uncommon for these legal remedies to be deliberately exploited by the parties just to stall for the execution of court decisions.[6]

[5] Ahmad Mujahidin, *Reform of Civil Procedure Law of the Religious Court and the Syariyah Court*, Jakarta: IKAHI-MA-RI Publisher, 2008, p. 9.

[6] See Article 5 paragraph (2) Law no. 48 of 2009 jo, Articles 89 and 90 of Law no. 50 of 2009.

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There is a fee for proceeding to litigate in principle:

- Article 4 paragraph (2) and Article 5 paragraph (2) Law no. 14/1970
- Article 121 paragraph 4 and Article 182 HIR
- Article 145 paragraph 4, Article 192 s.d. Article 194 RBg)

This case fee includes the registration fee and fees for summons, notification of the parties and stamp duty fees. In addition, if a lawyer is asked for help, costs must also be incurred.[7]

CONCLUSION

Based on the overall description above, the following conclusions can be drawn that in order to realize the principles of simple, fast and low cost judiciary, and reduce the accumulation of cases at the Cassation level, limitation of legal remedies has been carried out by regulating the limitation of cassation legal remedies in the form of Law, PERMA, and SEMA. Then that in the context of limiting cassation legal remedies, several efforts can be made including:

a. Efforts to limit cassation legal remedies by institutionalizing mediation institutions in court.
b. Efforts to limit legal remedies by limiting the enforcement of the provisions of Article 30 of Law no. 14/1985.
c. Efforts to limit legal remedies by limiting the types of cases.
d. Efforts to limit legal remedies by increasing the implementation of the supervisory function by the Supreme Court.

[7] JHAPER: Vol. 1, No. 1, January-June 2015: 15–29 Latifiani: *Problems in the Implementation of Judges' Decisions.*

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